

1                   **BEFORE THE POLLUTION CONTROL HEARINGS BOARD**  
2                   **STATE OF WASHINGTON**

3 **RANDALL GILLINGHAM**                   )

4                   **Appellant.**                   )

5                   **v.**                   )

6                   )

7 **SPOKANE COUNTY AIR POLLUTION**  
8 **CONTROL AUTHORITY,**                   )

9                   **Respondent.**                   )

---

PCHB NO. 92-236

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER**

11           This matter came before the Pollution Control Hearings Board ("Board") in an appeal  
12 filed on December 24, 1992, by Randall Gillingham ("Gillingham"), of a Nouce and Order of  
13 Assessment of Civil Penalty issued by Spokane County Air Pollution Control Authority  
14 ("SCAPCA") on December 4, 1992. A hearing was held in Spokane on May 20, 1993  
15 Gillingham represented himself, and SCAPCA was represented by Thomas Kingen, of Perkins  
16 Coie Caryn Winters, of C W Court Reporting, recorded the proceedings. Board Member  
17 Richard Kelley conducted the hearing, during which witnesses provided sworn testimony and  
18 exhibits were admitted; Chairman Harold Zimmerman and Member Robert Jensen later  
19 listened to the tape recording of the proceedings and reviewed the exhibits. Having reviewed  
20 all the evidence in the case, the Board makes the following:

21                                   **FINDINGS OF FACT**

22                                   **I**

23           On October 23, 1992, at approximately 11.05 a.m., SCAPCA Inspector Albert LePage  
24 visited a property in the West 10900 block of Betz Road, Cheney. He found 4 fires burning,  
25 each of them in excess of 4 feet in diameter.

26 **FINAL FINDINGS OF FACT,**  
27 **CONCLUSIONS OF LAW AND ORDER**  
PCHB NO 92-236                   -1-

1  
2 II

3 Tending the fires was Erik Fietek, who identified himself as an employee of Randall  
4 Gillingham. Fietek said that Fire District #3 had been called that morning for clearance to  
5 burn that day. He had water and a small bulldozer on site.

6 III

7 The property was owned by Randall Gillingham, who testified he had purchased the  
8 property, consisting of 4 duplexes, in poor condition but occupied, and was cleaning up the  
9 property.

10 IV

11 The fires contained vegetable matter and sticks, and emitted a considerable volume of  
12 smoke, making a plume almost a block square. No illegal materials were observed in the  
13 fires.

14 V

15 LePage issued Field Notice of Violation No. 5147 at the site.

16 VI

17 On December 4, 1992, SCAPCA issued Notice and Order of Assessment of Civil  
18 Penalty No. 5147, levying a penalty of \$250 for violation of RCW 70.94.430 and SCAPCA  
19 Regulation I, Section 6.01. The Notice was served on Gillingham's secretary on  
20 December 10.

21 VII

22 Mabel Caine, Compliance Administrator of SCAPCA, testified that Gillingham phoned  
23 her after receiving the Notice, used abusive language, and made what she considered to be a  
24 threatening statement directed toward the inspector. Gillingham did not attempt to refute  
25 Caine's statement in his testimony.

26 FINAL FINDINGS OF FACT.  
27 CONCLUSIONS OF LAW AND ORDER  
PCHB NO. 92-236

VIII

Caine also testified that the penalty assessed falls within the guidelines of SCAPCA for determining penalty amounts.

IX

Gillingham testified that, although a long-term resident of the Spokane area, he had never heard or seen any information regarding air pollution restrictions, and therefore had no notice of the SCAPCA regulations

X

Gillingham filed a letter with the Board on December 24, 1992, appealing the Notice and Order of Assessment of Civil Penalty

XI

Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such. Based on the preceding findings of fact, the Board makes the following:

CONCLUSIONS OF LAW

I

The Board has jurisdiction in this matter under RCW 43.21B.110.

II

Gillingham, as owner of the property, is strictly liable for violations occurring on his property .

*The Washington Clean Air Act is a strict liability statute. Acts violating its implementing regulations are not excused on the basis of intent. Moreover, the duty to comply cannot be delegated away by contract. RCW 70.94 040.*

Neither reliance on information from the Fire District nor employment of another person to tend the fires removes this liability

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER  
PCHB NO. 92-236

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

III

SCAPCA Regulations having been properly adopted by the board of SCAPCA on June 9, 1969, revised April 16, 1992, and made effective May 17, 1992, with the required public notice, this Board finds that Gillingham had sufficient notice of the burning regulations.

IV

SCAPCA regulations are ambiguous on the question of whether a property with multiple, separate dwelling units should be treated as one housing unit for purposes of the home burning exception under 6.01 (G)(2)

*Single small fires on the premises on a residence may be allowed.*

*And further, the regulations in Section 1.04 (MM) define "residence":*

*Residence means a place, especially a house, in which a person lives or resides.*

Because of the inexactness of this language when applied to a large parcel of land containing 4 duplexes, the Board makes no finding on the question of whether the cited fires should properly fall under the residential or the commercial provisions of the SCAPCA regulations.

V

Regardless of whether the fires are treated as residential or commercial in origin, the size of the fire is still required by Section 6.01 (G)(2) to be "small", and "small fire" is defined in Section 1.04 (NN) as:

*Small fire means a fire not more than four feet in diameter or more than three feet high.*

We find that Gillingham's fires each violated the size limitation, and they were therefore illegal.

VI

The \$250 penalty issued by SCAPCA to Randall Gillingham on December 4, 1992, is reasonable.

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER  
PCHB NO. 92-236

VII

Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such.  
Based on the preceding findings of fact and conclusions of law, we issue the following:

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

**ORDER**

The Notice and Order of Assessment of Civil Penalty #5147, with a penalty of \$250, issued by SCAPCA to Randall Gillingham on December 4, 1992, is upheld.

Done this 15th day of June, 1993. in Lacey, Washington.

**POLLUTION CONTROL HEARINGS BOARD**

  
RICHARD C. KELLEY, Presiding

  
HAROLD S. ZIMMERMAN, Chairman

  
ROBERT V. JENSEN, Member

P92-236F

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER  
PCHB NO. 92-236